

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ILLINOIS UNION INSURANCE
COMPANY, et al.,

Plaintiffs,

v.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No. 13-cv-04863-JST

**ORDER GRANTING IN PART AND
DENYING IN PART INTUITIVE'S
MOTION TO FILE UNDER SEAL**

Re: ECF No. 144

Intuitive Surgical, Inc. ("Intuitive") moves to file under seal portions of its Opposition to Illinois Union Insurance Company's ("Illinois Union") and Navigators Specialty Insurance Company's ("Navigators") motions for summary judgment, as well as portions of the exhibits attached to Intuitive's opposition briefs. ECF No. 144. Intuitive and Ironshore Specialty Insurance Company ("Ironshore") have filed declarations in support of sealing. ECF Nos. 144-1, 149. The Court grants the motion in part and denies the motion in part.

A party seeking to seal a document filed with the court must (1) comply with Civil Local Rule 79-5; and (2) rebut the "a strong presumption in favor of access" that applies to all documents other than grand jury transcripts or pre-indictment warrant materials. Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation and internal quotations omitted).

With respect to the first prong, Local Rule 79-5 requires, as a threshold, a request that (1) "establishes that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law"; and (2) is "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b). An administrative motion to seal must also fulfill

the requirements of Civil Local Rule 79-5(d). “Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” Civil L.R. 79-5(d)(1)(A).

With respect to the second prong, the showing required for overcoming the strong presumption of access depends on the type of motion to which the document is attached. “[A] ‘compelling reasons’ standard applies to most judicial records.¹ This standard derives from the common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 678 (9th Cir. 2010) (quoting Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 597 n.7 (1978)). To overcome this strong presumption, the party seeking to seal a judicial record must “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” Kamakana, 447 F.3d at 1178–79 (internal citations omitted).

After reviewing Intuitive’s motion to file under seal, the parties’ declarations in support of sealing, and the redacted and unredacted versions of the underlying exhibits, the Court concludes that only certain portions of the attached exhibits are properly sealable, as outlined in the table below. Regarding the portions that the Court has concluded are properly sealable, the Court finds that Intuitive’s requests are “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). The Court also finds that Intuitive and/or Ironshore have articulated “compelling reasons” for sealing these portions. See ECF Nos. 144-1, 149.

¹ On the other hand, records attached to motions that are only “tangentially related to the merits of a case” are not subject to the strong presumption of access. Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101 (9th Cir. 2016). Instead, a party need only make a showing under the good cause standard of Rule 26(c) to justify the sealing of the materials. Id. at 1097. A court may, for good cause, keep documents confidential “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c).

<u>DOCUMENT</u>	<u>PORTIONS SOUGHT TO BE SEALED</u>	<u>GRANTED/DENIED</u>
Intuitive's Opposition to Illinois Union Motion	Lines 3:14-15; 7:10; 7:14-16; 8:17-18; 8:21-22; 8:27-28; 9:1-2; 9:3-4; 9:6-7; 9:10-16; 10:1-4; 10:16-18; 11:6-9; 11:12-15; 11:17-24; 11:26; 12:1; 13:15-19; 14:22-23; 14:25-28; 25:9-14	Denied: not supported by a declaration
	Lines 7:6	Denied: not supported by a declaration
	Lines 7:7-8	Denied: not supported by a declaration
Intuitive's Opposition to Navigators Motion	Lines 4:17-19	Granted
	Lines 11:3-5	Denied: not supported by a declaration
	Line 11:26	Granted
	Lines 17:27-28	Granted
	Lines 19:18-21	Granted
Declaration of Erika E. Schmidt In Support of Intuitive's Oppositions to Illinois Union's and Navigators' Motions ("Schmidt Declaration")	Lines 4:12-17	Denied: not supported by a declaration
	Lines 6:1-2	Denied: not supported by a declaration
	Lines 15:4-7, 15:9-12; 15:14-16; 15:18-19; 15:21-23; 15:25-27	Denied: not supported by a declaration
	Lines 17:12-14	Denied: purported reasons for sealing do not apply
	Lines 19:17-19	Denied: not supported by a declaration
	Lines 32:7-8	Denied: not supported by a declaration
Ex. 4 to Schmidt Declaration	Pages 107 and 188 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
Ex. 6 to Schmidt	Entire Exhibit	Granted

1	Declaration	Page 43 of excerpts from the certified deposition transcript of Sara Hua Forum	Granted
2			
3	Ex. 8 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
4	Declaration		
5	Ex. 11 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
6	Declaration		
7	Ex. 12 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
8	Declaration		
9	Ex. 13 to Schmidt	Entire Exhibit	Granted as to pages 14–21, 47–48; denied as to the remainder as not supported by a declaration
10	Declaration		
11		Deposition Exhibit 27 (IRONSHORE-SBP0000909; IRONSHORE-SBP0000912-929)	Granted as to IRONSHORE-SBP0000912-929; denied as to IRONSHORE-SBP0000909 as not supported by Intuitive’s declaration
12			
13			
14	Ex. 14 to Schmidt	Excerpt at ISI-IRNSHR-136610	Granted
15	Declaration		
16		ISI-IRNSHR-136621 – ISI-IRNSHR-136632	Granted
17	Ex. 15 to Schmidt	All excerpts from the certified deposition transcript of Alicia Bromfield	Granted as to page 14–21, 42–43, 47–49; denied as to all other portions as not supported by Ironshore’s declaration
18	Declaration		
19		Pages 48-49 of excerpts from the certified deposition transcript of Alicia Bromfield	Granted
20			
21		Deposition Exhibit 56 (IRONSHORE0002638 – IRONSHORE0002654)	Denied: not supported by a declaration
22			
23		IRONSHORE0004860 – IRONSHORE0002871	Granted
24			
25	Ex. 16 to Schmidt	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
26	Declaration		
27		Deposition Exhibit 323 (IUC011660 – IUC011661)	Granted
28			

Ex. 17 to Schmidt Declaration	WS-NAV00106 – WS-NAV00143	Granted
Ex. 18 to Schmidt Declaration	Pages 211 – 213, and 226 – 229 of excerpts from the certified deposition transcript of Regina Roque	Granted
Ex. 19 to Schmidt Declaration	Deposition Exhibit 125 (WS—ACE00111 – WS-ACE00151)	Granted
Ex. 20 to Schmidt Declaration	Redactions throughout entire exhibit	Granted
Ex. 21 to Schmidt Declaration	Deposition Exhibit 125 (WS—ACE00111 – WS-ACE00151)	Granted
	Redactions throughout Deposition Exhibit 101 (WS-ACE00857 – WS-ACE00872)	Granted
	Redactions throughout Deposition Exhibit 126 (IUIC 000634 – IUIC 000634 – A13)	Granted
	Deposition Exhibit 127 (IUIC 000625 – IUIC 000626)	Granted
	Deposition Exhibit 129 (IUIC 001597 – IUIC 001605)	Granted
	All excerpts from the certified deposition transcript of James Silas and Laura Sunderlin	Denied: not supported by a declaration
Ex. 22 to Schmidt Declaration	Deposition Exhibit 139 (IUIC 001750 – IUIC 001757)	Granted
	Redactions throughout Deposition Exhibit 101 (WS-ACE00857 – WS-ACE00872)	Granted
Ex. 23 to Schmidt Declaration	All excerpts from the certified deposition transcript of Robert Romeo; all excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
	Deposition Exhibit 19 (IRONSHORE-SBP0001081 – IRONSHORE-SBP0001120)	Granted as to Ironshore-SBP 1084; denied as to remainder as not supported by a declaration

1	Ex. 24 to Schmidt	Deposition Exhibit 125 (WS—ACE00111 – WS-ACE00151)	Granted
2	Declaration		
3	Ex. 26 to Schmidt	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
4	Declaration		
5	Ex. 27 to Schmidt	Entire Exhibit	Granted as to the insurance application; denied as to the deposition transcript as not supported by a declaration
6	Declaration		
7	Ex. 28 to Schmidt	Deposition Exhibit Silas 349 (IUCI007878 -- IUCI007955)	Denied: not supported by a declaration
8	Declaration		
9	Ex. 30 to Schmidt	Page 159 of excerpts from the certified deposition transcript of Brian Gawle	Granted
10	Declaration		
11		WS-NAV00106 – WS-NAV00143	Granted
12			
13	Ex. 33 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
14	Declaration		
15	Ex. 36 to Schmidt	All excerpts from the certified deposition transcript of Sara Roitman	Granted
16	Declaration		
17	Ex. 39 to Schmidt	Page 159 of excerpts from the certified deposition transcript of Brian Gawle	Granted
18	Declaration		
19	Ex. 41 to Schmidt	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
20	Declaration		
21		All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
22			
23	Ex. 42 to Schmidt	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
24	Declaration		
25	Ex. 44 to Schmidt	IRONSHORE-SBP0000203	Granted
26	Declaration	IRONSHORE0006895	Denied: not supported by a declaration
27			
28			

Ex. 45 to Schmidt Declaration	Entire Exhibit	Granted as to pages 7–8, 14–18, 167–168, and 234 of the Linda McLaughlin deposition transcript; denied as to the remainder of the exhibit as not supported by a declaration
	Pages 167 from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8, 14–18, 167–168, and 234 of the Linda McLaughlin deposition transcript; denied as to the remainder of the exhibit as not supported by a declaration
	Pages 168, 234 from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8, 14–18, 167–168, and 234 of Linda McLaughlin deposition transcript; denied as to the remainder of the exhibit as not supported by a declaration
Ex. 46 to Schmidt Declaration	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
	IRONSHORE0006895	Denied: not supported by a declaration
	IRONSHORE0007150	Granted
	All excerpts from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8 and 14–18
	Deposition Exhibit 18 (WS-NAV00631 – WS-NAV00632)	Granted
Ex. 47 to Schmidt Declaration	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
Ex. 48 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 49 to Schmidt Declaration	All excerpts from the certified deposition transcript of Laura Sunderlin	Denied: not supported by a declaration
	Redactions throughout Deposition Exhibit 126 (IUIC 000634 – IUIC 000634 – A13)	Granted

	Deposition Exhibit 127 (IUIC 000625 – IUIC 000626)	Granted
	Deposition Exhibit 139 (IUIC 001750 – IUIC 001757)	Granted
Ex. 51 to Schmidt Declaration	Deposition Exhibit 110 (IUIC 000666 -- 000666 A2)	Granted
Ex. 52 to Schmidt Declaration	Entire Exhibit	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 55 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
Ex. 56 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
	Pages 131-132 of excerpts from the certified transcript of Tristan Gabriel	Denied: not supported by a declaration
	WS-ACE00823 – WS-ACE00844	Granted
Ex. 57 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
	WS-ACE00823 – WS-ACE00844	Granted
Ex. 59 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 60 to Schmidt Declaration	Pages 131-132 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration
	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration

Ex. 61 to Schmidt Declaration	Pages 131-132 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration
	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 62 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
	Deposition Exhibit 393 (IUC020789 -- IUC020798)	Granted
Ex. 63 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
	Deposition Exhibit 321 (IUC011077 -- IUC011083)	Granted
Ex. 64 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
	Deposition Exhibit 323 (IUC011660)	Granted
Ex. 65 to Schmidt Declaration	Pages 58-61 of excerpts from the certified deposition transcript of Steven DiLiberto	Denied: not supported by a declaration
	Deposition Exhibit 350 (IUC014675 -- 14678)	Denied: not supported by a declaration
	Deposition Exhibit 324 (IUC012349 -- 12353)	Denied: not supported by a declaration
	Deposition Exhibit 356 (IUC014697 -- 14701)	Denied: not supported by a declaration
	Deposition Exhibit 357 (IUC014702 -- 14707)	Denied: not supported by a declaration
	Deposition Exhibit 358 (IUC014712 -- 14716)	Denied: not supported by a declaration

	Deposition Exhibit 359 (IUC014708 – 14711)	Denied: not supported by a declaration
	All excerpts from the certified deposition transcripts of James Silas and Robert Romeo	Denied: not supported by a declaration
Ex. 66 to Schmidt Declaration	Deposition Exhibit 326 (IUC010958 – IUC01096)	Granted
	Deposition Exhibit 361 (IUC014519 – IUC014521)	Granted
Ex. 67 to Schmidt Declaration	Pages 226 – 229 of excerpts from the certified deposition transcript of Regina Roque	Granted
Ex. 69 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 70 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 71 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 72 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 74 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 75 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 76 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 77 to Schmidt Declaration	Page 74 of excerpts from the certified deposition transcript of Laura Sunderlin	Granted
	Pages 20-21 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration

	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 78 to Schmidt Declaration	Page 74 of excerpts from the certified deposition transcript of Laura Sunderlin	Granted
	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 79 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 80 to Schmidt Declaration	Page 115 and 117 of excerpts from the certified deposition transcript of Laura Sunderlin	Granted
Ex. 82 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 83 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 85 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 86 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 87 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 89 to Schmidt Declaration	All excerpts from the certified deposition transcript of Tristan Gabriel and James Silas	Denied: not supported by a declaration
Ex. 90 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 91 to Schmidt Declaration	Entire Exhibit	Denied for failure to narrowly tailor portions sought to be sealed

Ex. 92 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 94 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 95 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 96 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 97 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 98 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 99 to Schmidt Declaration	IUIC014742 – IUIC014755	Denied: not supported by a declaration
Ex. 100 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 102 to Schmidt Declaration	Pages 138-140 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration
Ex. 103 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 105 to Schmidt Declaration	IUIC014717 – IUIC014741	Denied: not supported by a declaration
Ex. 109 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 110 to Schmidt Declaration	Page 88 of excerpts from the certified deposition transcript of Steven DiLiberto	Denied: not supported by a declaration

Ex. 118 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 119 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 121 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 122 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 123 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 124 to Schmidt Declaration	Entire Exhibit	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 125 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
	Deposition Exhibit 402 (IUC017666)	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 126 to Schmidt Declaration	All excerpts from the certified deposition transcript of Steven DiLiberto.	Denied: not supported by a declaration
	Deposition Exhibit 402 (IUC017666)	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 141 to Schmidt Declaration	Redactions throughout entire exhibit	Granted
Ex. 142 to Schmidt Declaration	Page 5:24-6:2; 6:16-23; 9:14; 10:2-5; 10:21-24	Granted
Ex. 143 to Schmidt Declaration	WS-NAV00028 – WS- NAV00068	Granted
Ex. 144 to Schmidt Declaration	Pages 105-107 of excerpts from the certified deposition transcript of Jeff Mayes	Denied: not supported by a declaration

1	Ex. 145 to Schmidt	Entire Exhibit	Granted
2	Declaration		
3	Ex. 146 to Schmidt	Entire Exhibit	Denied: not supported by a
4	Declaration		declaration
5	Ex. 149 to Schmidt	All excerpts from the certified	Denied: not supported by a
6	Declaration	deposition transcripts of	declaration
7		Regina Roque and Andrew	
8		Barrengos	
9		Pages 74-81 of excerpts from	Granted
10		the certified deposition	
11		transcripts of Regina Roque.	
12	Ex. 150 to Schmidt	Page 127 of excerpts from the	Granted
13	Declaration	certified deposition transcript	
14		of Nicky Espinosa Hayes	
15	Ex. 152 to Schmidt	Redactions throughout	Granted
16	Declaration	Deposition Exhibit 101 (WS-	
17		ACE00857 – WS-ACE00872)	
18		Page 78 of excerpts from the	Denied: not supported by a
19		certified deposition transcript	declaration
20		of Robert Romeo	
21	Ex. 157 to Schmidt	Pages 26-33 of excerpts from	Granted
22	Declaration	the certified deposition	
23		transcript of Regina Roque	
24	Ex. 158 to Schmidt	Entire Exhibit	Denied: not supported by a
25	Declaration		declaration
26		Deposition Exhibit 153 (WS-	Granted
27		NAV00607 – WS-NAV00608)	
28		Deposition Exhibit 157 (WS-	Granted
		ACE00331 – WS-ACE00335)	
		Page 139 of excerpts from the	Granted
		certified deposition transcript	
		of Andrew Barrengos	
		All excerpts from the certified	Denied for failure to narrowly
		deposition transcript of Regina	tailor portions sought to be sealed
		Roque	
	Ex. 159 to Schmidt	Entire Exhibit	Granted as to pages 7–8 and 14–
	Declaration		18 of the Linda McLaughlin
			deposition transcript; denied as to
			the remainder of the exhibit as not
			supported by a declaration

	Page 101 of excerpts from the certified deposition transcript of Linda McLaughlin	Granted
Ex. 160 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration

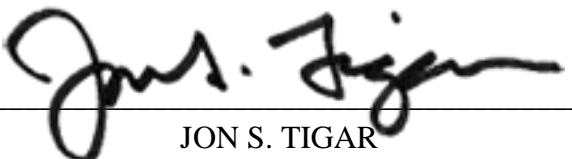
Regarding the documents for which the Court has granted Intuitive's motion to seal, "the document filed under seal will remain under seal and the public will have access only to the redacted version, if any, accompanying the motion." Civil L. R. 79-5(f)(1).

With respect to many of the documents above, Intuitive sought to file the document under seal because another party designated the material as confidential. Local Rule 79-5 requires that, within four days of the filing of the administrative motion to file under seal, the designating party file a declaration establishing that the designated material is sealable. Only Ironshore filed such a declaration. ECF No. 149. With respect to those exhibits for which no supporting declaration was filed, the Court has denied Intuitive's motion noting that the exhibit was "not supported by a declaration." Should any party other than Ironshore wish to file a supporting declaration, the Court will reconsider Intuitive's motion with respect to those exhibits identified in the newly filed declaration(s). If no such declaration is filed within seven days of the filing date of this Order, Intuitive may file the documents in the public record.

The Court will not consider those portions of the documents for which the Court has denied Intuitive's motion to seal unless Intuitive files the document in the public record without the redactions the Court has rejected, in conformance with this Order, within fourteen days from the date of this Order.

IT IS SO ORDERED.

Dated: April 21, 2016


 JON S. TIGAR
 United States District Judge